

**PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		SOUTHERN DISTRICT	
Name (Under which you were convicted): ROBERT MOCO		Docket or Case No.: 4097-14	
Place of Confinement:	Clinton Correctional Facility P.O. Box 2001 Dannemora, New York 12929	Prisoner No: 15R2643	
Petitioner (include the name under which you were convicted) ROBERT MOCO		v.	Respondent (Authorized Person Having Custody of Petitioner) Earl Bell in his capacity as Superintendent of Clinton Correctional Facility
The Attorney General of the State of New York – Letitia James			

PETITION

1. (a) Name and location of court which entered judgment of conviction under attack:

New York County Supreme Court
100 Church St,
New York, NY 10007

- (b) Criminal docket or case number (if you know): 4097-14

2. (a) Date of judgment of Conviction (if you know): 4/21/15

- (b) Date of Sentencing (if you know): _____

3. Length of sentence: 7 Years

4. In this case, were you convicted on more than one count or of more than one crime? Yes: ☐ No: ☐

5. Identify all of the crimes of which you were convicted and sentenced in this case: one count of Stalking in the First Degree (Penal Law 120.60(1)); One Count of Criminal Contempt in the first degree (Penal Law 215.51(b)(ii)), and two counts of Criminal Contempt in the Second Degree (Penal Law 215.51[3]).

6. (a) What was your plea? (Check one)

(1) Not Guilty ☒ (3) Nolo contendere ☐

(2) Guilty ☐ (4) Insanity plea ☐

- (b) If you entered a guilty plea to one court of charge and not a guilty plea to another court or charge, what did you plead guilty to and what did you plead not guilty to?

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(c) If you went to trial, what kind of trial did you have (Check one)

Jury ☒ Judge ☐

7. Did you testify at the trial?

Yes ☒ No ☐

8. Did you testify at either a pretrial hearing, trial or a post-trial hearing (Check one)?

Yes ☐ No ☐

9. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

10. If you did appeal, answer the following:

(a) Name of court: Appellate Division First Department

(b) Docket or case number (if you know): 4097-14

(c) Result: Affirmed

(d) Date of result (if you know): 10/31/2019

(e) Citation to the case (if you know): _____

(f) Grounds Raised:

The Trial court Deprived Mr. Moco of a Fair trial by allowing the prosecution to Cross Examine him about the inflammatory and prejudicial accusation that he has previously threatened to Rape a woman's 4 year old daughter and repeatedly followed that woman in violation of an order of protection where the court did ascertain whether the prior charges were dismissed on the merits, did not conduct the requisite balancing analysis and Erroneously believe that Mr. Moco has opened the door to this line of questioning.

The trial court violated Mr. Moco's right to counsel by denying his request to retain new counsel even after Mr. Moco had lost confidence in his attorneys willingness and ability to defend him, and the relationship between the two had broken down.

In the alternative, Mr. Moco's term of imprisonment, currently set at the maximum of seven years should be reduced, given that Mr. Moco had no prior convictions and the prosecution acknowledged prior to trial that three years of imprisonment would be sufficient.

(g) Did you seek further review by a higher state court? Yes ☒ No ☐:

If "yes," answer the following:

(1) Name of court: NYS Court of Appeals

(2) Docket or case number (if you know): _____

(3) Result: Leave Denied

(4) Date of Result (if you know): 1/9/2020

(5) Citation to the case (if you know): _____

(6) Grounds Raised: _____

(h) Did you file a petition for certiorari in the United State Supreme Court? Yes ☐ No ☒

If "yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of Result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, application, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☐

11. If you answer to Question 10 was "Yes," give the following information:

(a) (1) Name of Court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of proceeding: _____

(5) Grounds Raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed a second petition, application, or motion, give the same information:

(1) Name of Court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of proceeding: _____

(5) Grounds Raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information

(1) Name of Court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of proceeding: _____

- (5) Grounds Raised: _____
- (6) Did you receive a hearing where evidence was given on your petition, application, or motion?
Yes ☐ No ☐
- (7) Result: _____
- (8) Date of result (if you know): _____
- (d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?
- (1) 1st Petition: Yes ☐ No ☐
- (2) 2nd Petition: Yes ☐ No ☐
- (3) 3rd Petition: Yes ☐ No ☐
- (e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: to proceed in the federal court, you must ordinarily first exhaust (use upon) your available state court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petitioner, you may be barred from presenting additional grounds at a later date.

GROUND 1: THE STATE COURT DENIED THE PETITIONER HIS RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAW WHEN IT ABUSED ITS DISCRETION IN ALLOWING THE PROSECUTION TO ELICIT EVIDENCE OF AN UNCHARGED CRIME WITHOUT BALANCING THE REQUISITE WEIGHT ANALYSIS

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

The trial court allowed the prosecution to Cross Examine the petitioner about an uncharged crime and prejudicial accusation that the petitioner had previously threatened to Rape a woman's 4 year old daughter and repeatedly followed that woman in violation of an order of protection. Court did not conduct the necessary balancing analysis to determine the probative value of the evidence.

- (b) If you did not exhaust your state remedies on Ground One, explain why:

- (c) Direct Appeal of Ground 1:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

- (2) If your answer to Question (d)(1) is "Yes", state:

Type of Motion or Petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

- (4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

- (5) If you answer to Question (d)(4) is "Yes", did you raise this issue in the appeal?

Yes ☐ No ☐

- (6) If you answer to Question (d)(4) is "Yes", state

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the Court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (7) If you answer to Question (d)(4) or Question (d)(5) is "No" explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground 1:

GROUND 2: THE STATE COURT VIOLATED THE PETITIONERS RIGHT TO COUNSEL WHEN IT DENIED HIS REQUEST TO RETAIN NEW COUNSEL.

- (a) Supporting facts (Do no argue or cite law. Just state the specific facts that support your claim):

The trial court violated the petitioner's right to counsel by denying his request to retain new counsel even after the petitioner had lost confidence in counsel's willingness and ability to defend him, and the relationship between the two had broken down.

- (b) If you did not exhaust your state remedies on Ground Two, explain why:
- _____

(c) **Direct Appeal of Ground 2:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post Conviction Proceedings:**

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

- (2) If your answer to Question (d)(1) is "Yes", state:

Type of Motion or Petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

- (4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

- (5) If you answer to Question (d)(4) is "Yes", did you raise this issue in the appeal?

Yes ☐ No ☐

- (6) If you answer to Question (d)(4) is "Yes", state

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the Court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (7) If you answer to Question (d)(4) or Question (d)(5) is "No" explain why you did not raise this issue:
- _____

(e) **Other Remedies.** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground 2:

GROUND 3: THE DEFENDANT WAS DENIED HIS 6TH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Defense counsel failed to request a missing witness charge for the witnesses who were not called to testify and had material knowledge to the case, and no explanation for their absence was given by the prosecution.

- (b) If you did not exhaust your state remedies on Ground Three, explain why:

These claims were not preserved for review on direct appeal, as they were not presented during trial. They are currently being presented in the proper post conviction motion.

- (c)
- Direct Appeal of Ground 3:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: These claims were not preserved for review on direct appeal, as they were not presented during trial. They are currently being presented in the proper post conviction motion.

- (d)
- Post Conviction Proceedings:**

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒ CURRENTLY BEING FILED

- (2) If your answer to Question (d)(1) is "Yes", state:

Type of Motion or Petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

- (4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

- (5) If your answer to Question (d)(4) is "Yes", did you raise this issue in the appeal?

Yes ☐ No ☐

- (6) If your answer to Question (d)(4) is "Yes", state

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the Court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If you answer to Question (d)(4) or Question (d)(5) is "No" explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground 3: _____

13. Please answer these additional questions about the petitioner you are filing:

(a) Have all ground for relief that you have raised in this petitioner been presented to the highest state court having jurisdiction?

Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

Ground 3 was not preserved for review on direct appeal, as they were not presented during trial. They are currently being presented in the proper post conviction motion.

(b) Is there any ground in this petitioner that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them

Ground 3 is based on evidence outside of the record. The petitioner has been researching and investigating the case and the motion to present these findings is currently being presented in the state court. Covid-19 has delayed new filings from being presented.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?

Yes ☐ No ☒

If "Yes," state: Name and Location of the Court: _____

Docket Number: _____

Type of Proceeding: _____

Issues Raised: _____

Date of Decision: _____

The result(s): _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?

Yes ☐ No ☒ - CURRENTLY BEING FILED

If "Yes," state: Name and Location of the Court: _____

Docket Number: _____
 Type of Proceeding: _____
 Issues Raised: _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

My attorney represented me at all stages of the criminal Process.

Michael Marley
 250 W. 100th St. Suite 1102
 New York, NY 10025

Appellate Attorney:

Victorien Wu
 Office of the Appellate Defender
 11 Park Place, Suite 1601
 New York, NY 10007

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?

Yes ☐ No ☐

- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:

- (b) Give the date the other sentence was imposed: _____

- (c) Give the length of the other sentence: _____ years

- (d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitation as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2254(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review
 (B) the date on which the impediment to filing an application created by the State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action
 (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively application to case on collateral review; or


The petitioner's conviction became final on January 9, 2020. On this date his 15 month statute of limitations (including the ninety-days to file a writ or certiorari) began tolling. The petitioner has until April 9, 2020 to file his petition. The petitioner is timely.

THEREFORE, petitioner asks that this Court grant his petition for Habeas Relief and dismiss the indictment and conviction, or in the alternative grant a new trial to cure the errors committed by the state or Any Other Relief to Which Petitioner May Be Entitled

Signature of attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas corpus was placed in the prison mailing system on 12/22/20.

Executed/signed on 12/22/20 (date)



Signature of Petitioner

If person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT MOCO,

Petitioner, Pro se,

Request to Proceed

In Forma Pauperis

-against-

EARL BELL, Superintendent of Clinton Correctional Facility,

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Defendant.

State of New York)

County of Clinton)ss.:

I, ROBERT MOCO, am the petitioner in the above entitled matter. I hereby request to proceed without being required to prepay fees of costs or give security therefore. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore, and I believe I am entitled to redress.

1. If you are presently employed:

- a) Give the name and address of your employer
- b) State the amount of your earnings per month

Not Applicable. I am not Employed. I am incarcerated.

2. If you are not presently employed:

- a) State the date of start and termination of your last employment:
Start: Self Employed Termination: 4/21/15
- b) State your earnings per month: Less than 75,000

YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money your received.

Source: N/A

Amount you received: N/A

a) Are you receiving any public benefits?

Yes ☐ No ☒ Amount: _____

b) Do you receive any income from any other source?

Yes ☐ No ☒ Amount: _____

4. Do you have any money, including any money in a checking or savings account?

Yes ☐ No ☒

If so, how much: _____

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

5. Do you own any apartment, house or building, stocks, bonds, notes, automobiles or other property? If the answer is yes, describe the property and state its approximate value.

Yes ☐ No ☒

Property: _____

Value: _____

6. List the person(s) that you pay money to support and the amount you pay each month.

Person(s): _____

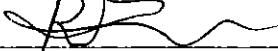
Amnt. per Month: _____

7. Do you pay rent or for a mortgage? Yes ☐ No ☒ If so, how much each month? _____

9. State any special financial circumstances which the Court should consider: Indigent Inmate

I understand that the Court shall dismiss this case if I give a false answer to any questions in this declaration. In addition, if I give a false answer I will be subject to penalties for perjury.

I declare under the penalty of perjury that the foregoing is true and correct

Dated: December, 22-2020 
(signature)

UH-9-41
Robert Mocco #15R2643
Clinton Correctional Facility
P.O. Box 2001
Dannemora, New York 12929

Clinton
Correctional Facility



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